

2005 General Assembly

Local governments withstood onslaught of legislation

Local government officials proved during the 2005 session of the General Assembly that when they speak as a single voice they could win out over powerful and influential interests. Local governments working together were able to defeat or mitigate efforts to decrease local taxing authority, diminish local land use authority, diminish local authority in providing Internet access and expand the heart/lung presumption provisions of the Workers' Compensation Act. Significant new funding for the Water Quality Improvement Fund was included in the budget and important nutrient trading legislation was enacted.

VML Legislative Program

Overall, the league's legislative program fared well. VML's 2005 Legislative Priorities were grouped under three headings: adequacy of state investments, adequacy of local revenues and land-use authority.

Adequacy of state investments addresses the importance of state funding for core services, including education and transportation. Just over \$848 million was pumped into transportation during the 2005 session, including a \$347.6 million appropriation from unanticipated revenues. Part of the new funding allowed cities and towns to be included in the transportation revenue sharing, which previously had been available only to counties. While education did not fare as well as transportation, the General Assembly appropriated \$2.3 million to restore half of the 8 percent reduction taken in 2002 in the at-risk add-on payment program, and restored \$10 million to the Literary Fund. The budget also included funding for a teacher salary increase in FY06, albeit for only a partial year. Finally, the budget included \$64 million in funding for the Chesapeake Bay and land conservation measures.

Adequacy of local revenues addresses the ability and authority of municipal and county officials to raise sufficient revenues to sustain services. The league was successful in fighting back efforts to enact a flush tax and a tipping fee. The compromise worked out by the league, the Virginia Association of Counties and the administration on the funding of the car tax reimbursement program was enacted. Telecommunications tax restructuring failed to gain approval, but the state auditor of public accounts was instructed to gather data to help consider the issue next session. The league helped defeat attempts to restrict larger cities from increasing the meals tax. It also beat back proposed constitutional amendments that would have eliminated the personal property tax on motor vehicles used for non-business purposes.

Land-use authority addresses the need for appropriate local tools to manage growth and sustain economic development. The league successfully defended local land-use authority in the areas of cash proffers, eminent domain and variances. Bills were introduced that would have harmed local authority in each area. The end results were favorable to local governments.

A league legislative priority was creation of a legislative study committee on licensure and regulatory issues relating to adult and juvenile group homes, including the effects of concentration of these facilities on neighborhoods. The study committee was approved and is to issue a report by Nov. 30. The committee will include five citizen members, including one representative of the league to be appointed by the Senate Rules Committee.

Despite the best efforts of the league and the localities that have the authority to use photo-red traffic enforcement programs, the legislature did not extend the sunset provision on this authority. Localities will lose their authority to use photo-red enforcement July 1. An overview follows of some of the most important bills to local governments.

Taxation & finance

Penalties on delinquent trust taxes increase

The penalties localities can impose on businesses that collect, but fail to remit admissions, meals or transient occupancy taxes can be substantially increased. SB 1052 (Wagner) will permit localities to increase the existing 10 percent penalty, after 30 days of delinquency, by 5 percent in each additional month up to a cap of 25 percent.

Property tax relief income limits raised

SB 844 (Deeds) and SB 851 (Cuccinelli) increase the amount of disability income that can be excluded for purposes of determining eligibility for property tax relief for the elderly and disabled by \$5,000.

Local tax appeals measure enacted

HB 2679 (Lingamfelter) makes substantial revisions to the local tax appeals process. The principal policy change provides that there is no requirement to “pay to play” in filing a judicial challenge of a decision of the state tax commissioner on an appeal of a local tax determination, except in the case of a frivolous appeal, substantial economic hardship to the locality, or likely flight of the taxpayer.

Conversely, the bill codifies, for the first time, the right of a locality to require payment in such cases when collection is rendered doubtful, and provides explicit authority for withholding a refund, ordered by the state tax commissioner, during judicial review of the commissioner’s decision initiated by the locality.

The bill also adds consumer utility tax disputes in excess of \$2,500, except for the consumer utility tax on wireless telecommunications services, to the list of taxes that may be appealed. The bill was a legislative priority of the Virginia Chamber of Commerce and was the subject of intense negotiation with local governments.

Car tax budget amendments adopted

The package of amendments in the governor’s budget bill designed to help implement a cap on the state’s car tax relief program beginning in calendar year 2006 survived intact. The General Assembly decided last year to cap the program that reimburses local governments with state money for lost personal property tax revenue at \$950 million annually.

These changes, together with a distribution schedule developed by the Secretary of Finance in coordination with VML and VACo, will ensure an orderly transition to the new Personal Property Tax Relief Act program in calendar year 2006. The amendments address the cash flow problems caused for “spring billers” by the program’s transition from a calendar year to a state fiscal year.

VML is developing a model ordinance that will be distributed to members in early May.

Transient occupancy tax

SB 793 (Watkins) codifies a 2004 Attorney General’s opinion holding that the transient occupancy tax may not be charged on rooms or space rented for meetings, conferences, special events and other purposes not entailing overnight accommodation.

Real estate tax exemptions proposed

HJR 633 (Ingram) / SJR 275 (Edwards) are constitutional amendments that would authorize localities to provide partial exemptions from real property taxation as an incentive to new construction in rehabilitation, redevelopment and conservation zones -- cleared the first hurdle for placement on the November 2006 ballot. Existing constitutional provisions permit partial exemption for renovation, rehabilitation or replacement; the proposed amendment would extend the same authority to new construction. The constitutional amendments will have to be re-enacted next before being placed on the ballot in 2006.

Enterprise zone laws revised

HB 2570 (Dudley) and SB 983 (Watkins) rewrite the rules for enterprise zones. Existing zones may live out the balance of their 10-year lives. All new zones will focus on grants instead of tax credits for the bonuses to businesses in a zone. Further, the current allotment of 60 zones is halved to 30. The economic health of the entire locality must be considered in the application for zones. As a result, wealthier localities with poorer pockets will find it more difficult to receive enterprise zone designations.

Failed tax, finance legislation

Harmful legislation that failed included legislation to remove the cap on car tax reimbursements, to require large cities to hold referenda before increasing the meals tax, to exclude gratuities and service charges from meals and sales tax, to limit the frequency in which counties could hold referenda on the question of adopting the meals tax, and to create an exclusion from for certain transactions relating to real estate appraisers when calculating BPOL taxes.

A variety of constitutional amendments to limit local taxes were killed, including amendments to cap real estate property assessments, eliminate taxation of motor vehicles, and allow exemption of some portion of assessed valuation from residential real estate taxation.

The General Assembly and the House Finance Committee in particular resisted with its usual fervor attempts to increase local taxing authority.

A good piece of legislation that was killed would have provided additional funding for courthouse construction by increasing the maximum assessment for costs in civil, criminal and traffic cases.

Land use

Cash proffer bills adopted

HB 2456 (Suit) and HB 2888 (Lingamfelter) in their original form would have harmed local governments that use conditional zoning that includes cash proffers. VML and the localities affected by the law worked to gain amendments to make the bills workable for the localities that now use proffers, as well as those that may in the future.

HB 2456 restates the law that cash proffers are voluntary, but that once a proffer commitment is made, it is enforceable by the locality against the party who made the cash proffer. The bill also limits any inflation factor for proffers.

HB 2888 places more obligations on local governments than HB 2456. It requires that the project for which cash was proffered get started within seven years of receipt of all payments. The start of a project is defined as construction, site work, engineering, right-of-way acquisition, surveying, or utility relocation. If at least one of the items isn't started in seven years, the cash that was proffered must be paid over to VDOT for use in the locality in the vicinity of the

development by which the proffers were made. However, because the time doesn't start running until the last payment is made, the transfer should kick in very rarely.

To save having to send school or other non-transportation proffers to VDOT, HB 2888 has a savings clause that allows the locality to spend it on other, similar projects in the vicinity of the development. A public hearing on the diversion must be held.

HB 2888 also establishes new reporting requirements for cash proffers. Each year, the locality must include in the capital improvement program the cash proffers received in the most recent fiscal year for which the figures are available and must include in its budget the amount of cash proffers it plans to use in the upcoming fiscal year. Additional tweaking of the requirements regarding the reports may arise in future years.

Local government noise regulation authority defended

Local government authority in the area of noise regulation is preserved under the final version of HB 2282 (Janis). In its original form the bill included a noise standard that would have allowed shooting ranges to generate significantly more noise than other kinds of businesses. As enacted, however, the proposed noise standard was removed and local governments retained control of noise regulation.

A workable compromise reached on variance bills

Several bills were filed to relax the standard for obtaining a variance, in the wake of a decision by the Virginia Supreme Court in April that reinforced the existing standards for a variance. VML successfully worked with the building and commercial properties group to develop an alternative -- the authority for zoning administrators to issue modifications of physical requirements in the zoning ordinance on an individual lot.

Under HB 2159 (Reese) and SB 1086 (Ticer), the locality may include this authority in its zoning ordinance. To justify a modification, the administrator must find that the ordinance creates a hardship; that the hardship is not shared generally in the vicinity; and that it will not harm adjacent properties. The written decision is to be mailed to the neighbors, who may appeal to the Board of Zoning Appeals. The applicant may also appeal if his request is denied.

Definition of junkyard amended

HB 1891 (Carrico) amends the definition of "automobile graveyard" to define it as a place where vehicles are stored and have been continuously inoperative for more than a year. The definition still applies if the vehicles are moved or rearranged within an existing lot or facility.

Eminent domain process revised

A variety of legislation affecting eminent domain and condemnation were introduced. Bills that passed include the following:

- SB 301 (O'Brien) requires that if property acquired by eminent domain is declared surplus within 15 years of the condemnor's being vested with title, the condemnor must offer to sell the property to the former owner at the original sale price plus interest at an annual rate of six percent, with price adjustments made for any improvements to the property.
- HB 1820 (Suit) modifies the provisions associated with a condemnor's entry onto property by (i) expanding the information provided in the initial request for permission to inspect and strengthening delivery requirements; (ii) requiring that the notice of intent to enter be posted or otherwise delivered to the owner in person, in addition to being sent by certified mail; and (iii) providing that if the owner files an action to recover damages caused by entry and is awarded

judgment in an amount 30 percent or more than the condemnor's final written offer, or if the court finds that the condemnor maliciously, willfully or recklessly damaged the owner's property, the court may award the owner reasonable court costs, attorney fees, and fees for up to three expert witnesses testifying at trial.

- HB 1821 (Suit) modifies the provisions associated with acquisitions under eminent domain by (i) requiring that a state agency's acquisition of real property be conducted in accordance with provisions that are only precatory under current law, including that the state agency establish an initial amount that is no less than the agency's approved appraisal of the fair market value of the property and that no owner can be required to surrender possession until the state agency pays the agreed purchase price or deposits funds with the court, and (ii) providing that if an owner is awarded at trial as compensation for the taking of or damage to property an amount that is 30 percent or more greater than the amount of the petitioner's written offer, the court may award the owner reasonable appraisal and engineering fees, and reasonable fees and travel costs for up to three expert witnesses testifying at trial. The cost award provisions do not apply to cases involving easements valued at less than \$10,000 or to cases in which a petition in condemnation or certificate of take or deposit was filed prior to July 1, 2005.

- HB 2427 (Cole) prohibits condemnation of any property for compensatory wetlands mitigation unless (i) the property sought to be acquired is located within the same locality as the project affecting wetlands, or (ii) the governing body of the locality where the property sought to be acquired consents to its acquisition for the purpose. The prohibitions do not apply to property acquired by the Commonwealth Transportation Commissioner by eminent domain.

Failed land-use bills

A number of bills restricting local land use authority died during the session. Bills that would have very narrowly defined public use in the context of condemnation and local authority to carry out public projects were killed; if enacted, the bills would have stopped urban redevelopment projects in their tracks.

Two bills filed in response to litigation in Arlington County were dropped toward the end of the session as part of an overall agreement by localities to pursue a non-legislative resolution of the issue of how the Northern Virginia localities can obtain funds from developers toward affordable housing efforts. Legislation to authorize local governments to issue licenses to abortion clinics was withdrawn by the patron. Legislation to confer standing on associations also was killed. Virginia will continue to follow the common law rule that the person seeking standing must have an immediate, pecuniary, and substantial interest in the litigation, and not a remote or indirect interest.

Transportation: No long-term fixes

Transportation was one of the most contested issues during the session, but no long-term solutions resulted from the debate. There were many bills introduced to restructure and fund transportation, particularly in the House. The many House measures were consolidated into four bills and one study resolution. The Senate merged its two major bills into one, and offered just one study as well. In the final days of the session, five major bills and the two study resolutions went into conference. Only one bill emerged from conference and passed the General Assembly. The rest of the bills and study resolutions died. Instead, the General Assembly will use the 2004-2006 budget to make short-term transportation funding commitments while members separately ponder the future of transportation funding.

The one bill that emerged from conference and passed on the last day of General Assembly action was HB 2596 (May). The bill creates greater opportunity for investment in rail and represents a melding of ideas from both chambers. HB 2596 eliminates the Railway Preservation and Development Fund and replaces it with the Rail Enhancement Fund. It establishes a nine-member rail advisory board, appointed by the governor. The board will develop recommendations to the Commonwealth Transportation Board regarding allocations of funds from the Rail Enhancement Fund, and will work with the state and affected railroads to identify, develop and advocate for projects and policies to enhance the quality and use of rail transportation. Additional funding for the Rail Enhancement Fund would come from the 4 percent of gross proceeds from the state vehicle rental tax -- funds that have been allocated to fund the operations of the Department of Motor Vehicles.

Other transportation issues

HB 2666 (McDonnell) and SB 1108 (Stosch) streamline and enhance the PPTA. The bills allow district commissions established under the Transportation District Act of 1964 to act as a "responsible public entity" and to exercise the power of eminent domain; issue revenue bonds for transportation projects; establish and collect tolls, among other powers. The bills also explicitly allow local governments to act as "responsible public entities" under the PPTA and to accept unsolicited proposals involving the construction, reconstruction, and/or maintenance of locally controlled highways.

SB 985 (Watkins) provides that if funding for the construction of a primary or interstate project is scheduled in the Commonwealth Transportation Board's Six-Year Improvement Program, a locality may choose to advance funds to the project, and, if such an advance is offered, the board may consider such request and agree to such advancement and the subsequent reimbursement of the locality.

Failed transportation measures

The list of transportation issues is very long, and includes a variety of bills introduced to restructure transportation funding, impose additional fees on drivers convicted of certain traffic offenses, allow counties to establish standards for subdivisions that differ from VDOT standards, change the allocation of highway funds and require localities to pay back funds to the state if the locality decided to oppose the improvements after state funds had been spent.

Also killed were three bills that would have expanded the revenue sharing program, which currently applies only to counties, to cities and towns. While the legislation was killed, the budget includes funding and language to accomplish the purposes included in these bills. Study resolutions to create a joint subcommittee to study transportation funding also failed on the next to last day of the session.

Telecommunications

Cable TV franchises

Verizon pushed a major revision of how cable TV franchises are to be awarded to a telephone company that wants to enter the cable market. The premise of the bill was that where there is competition, less governmental regulation is needed, because there would no longer be a monopoly in a service area. The bill was very complicated, and was fought by the cable television industry. After its defeat, the General Assembly indicated a desire to have the issue studied. VML expects to participate in negotiations over the next 10 months as Verizon pursues the concept.

Local authority to provide broadband Internet service would have been limited by a bill that was originally designed to protect Dickenson County, which provides broadband service to residents. Verizon opposed the bill and had it amended to create a new limit on local authority. VML worked with some affected localities and in the end, the bill died. Had the bill passed, it would have threatened the work the town of Shenandoah has done to enter the Internet business. Several other localities are evaluating doing what Shenandoah and Dickenson have done, and the bill would have chilled those efforts.

Audit of telecommunication tax receipts authorized

Although the telecommunications tax reform package included in HB 2880 (Nixon) was not acted upon, a provision in the bill authorizing the Auditor of Public Accounts to audit all local government receipts from taxes and fees on telecommunications services has been preserved. Accordingly, if the Governor signs HB2880, the Auditor of Public Accounts will be instructing the independent CPA firms who audit localities to identify and quantify the revenues from each such source received by the localities in FY 2005. Having this updated look at the current local telecommunications tax base will be helpful in evaluating the tax reform proposals when they make their expected reappearance prior to next year's General Assembly session.

General government

Police overtime bill approved

Despite opposition from local governments, a bill that requires police and sheriffs departments to calculate overtime based on hours in paid status -- rather than hours actually worked -- was adopted. SB 873 (Cuccinelli) applies to localities with 100 or more law-enforcement employees.

Preference granted to in-state contractors

In a departure from past policy, the General Assembly adopted a bill requiring percentage preferences for Virginia bidders in some situations on public contracts. If the lowest bidder's home state grants its resident bidders a percentage preference, HB 2151 (Amundson) requires state agencies or localities to give the same percentage preference to a second-place Virginia-resident bidder.

If the lower bidder's home state grants an absolute preference to its own residents, the low bid must be thrown out.

The state Department of General Services will be required to maintain a list of other states' percentage preferences, on which all public bodies can rely in applying this preference. There are no rules in the bill, however, about how to determine the "residence" of a bidder with business locations in more than one state or country.

Default procedure established for contract claims

HB 2283 (Janis), adopted by a unanimous vote in both the House and Senate, provides a contractor claim procedure for public contracts, if the public body has not included any other claim procedure in the contract. Under this default procedure, such claims must be submitted in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim must be given at the time of the occurrence or at the beginning of the work upon which the claim is based.

The bill also provides that a failure of a public body to render a final decision on a contract claim within 90 days shall be deemed a denial of the claim, for which the contractor would have the right to institute legal action.

Few constitutional amendments survive

Many constitutional amendments were introduced, but few survived both the House and Senate. Of particular interest to local governments are HJR 633 (Ingram) and SJR 275 (Edwards), which allow the General Assembly to enact legislation to allow localities to provide partial exemptions for real property taxation as an incentive to rehabilitation and redevelopment.

Existing constitutional provisions permit partial exemption for renovation, rehabilitation or replacement; the proposed amendment would extend the same authority to new construction in conservation, rehabilitation or redevelopment areas. The constitutional amendments will have to be re-enacted next year in the exact same form before being placed on the ballot in November 2006.

Other constitutional amendments passed include:

HJR 586 (Cosgrove) and SJR 337 (Newman), defining marriage as a union between one man and one woman and prohibiting the state and localities from recognizing other unions, and

SJR 339 (Mims), which deletes language in the constitution that prohibits the General Assembly from granting charters of incorporation to churches. The prohibition in the current constitution was held to be unconstitutional in a 2002 court case.

A variety of amendments to limit local taxes were killed, including amendments to cap real estate property assessments, eliminate taxation of motor vehicles, and allow an exemption for some assessed valuation from real estate taxation. Amendments to limit state appropriations and taxation also failed, including resolutions to require super majority votes for increases in state taxes and for state expenditures exceeding growth factors.

Election administration

HB 1840 (Parrish) provides employment protections to election officers similar to those provided jurors.

HB 2383 (Barlow) and SB 898 (Norment) provide that if the state were to hire private counsel to defend an electoral board member or member of the registrar's staff, the state would pay the attorney's fees. These bills codify current practice.

HB 1847 (Brink) requires that at least one electoral board member and either the registrar or a staff member attend annual training programs offered by the State Board of Elections. Cities and counties bear the financial costs, which are expected to be minimal. Training will be offered on a regional basis; currently most localities already meet this standard.

SB 928 (Puller) allows local governments and the state to make grants to non-sectarian organizations for meeting accessibility requirements as polling places.

Legislation that would have defined general registrars and their staffs as local civil servants failed.

Court clerks legislation

SB 992 (Devolites Davis) implements the Real Property Recording Act by creating a system for circuit court clerks to accept land records electronically. The bill will not become law unless re-enacted by the General Assembly, except for one provision that takes effect July 1. This provision requires the state Virginia Information Technology Agency to develop standards for implementing electronic recording of real property documents.

HB 1706 (Kilgore) provides that court clerks shall use the fees paid for copying to recoup the costs of providing the copies, with the balance of the funds paid to the state. Funds sufficient

to recoup the cost of making copies shall be deposited with the locality, which shall in turn appropriate funds to support copying costs. Such costs shall include lease and maintenance agreements, but shall not include salaries or related benefits.

Legislation to extend the immunity court clerks have from suits relating to remote access to legislation was killed. Also killed was legislation that would have limited charges for people under 150 percent of the poverty level for copying of court documents and that would have allowed certified public accountants (instead of the Auditor of Public Accounts) to audit the books of the clerk.

Graffiti ordinance authority revised

HB 1877 (McDougle) amends local graffiti ordinance provisions to require that any violation carry a mandatory minimum fine of \$500, where the defacement is more than (i) 20 feet off the ground, (ii) the defacement is gang-related, or (iii) is on an overpass. The bill also provides for cleaning of graffiti by a locality at its own expense.

Retirement, employee benefits

Line of Duty Act bills extend benefits

A proposal to transfer funding responsibilities to localities for health insurance benefits for local public safety officers was not enacted. In the end, changes to the Line of Duty Act under HB 1738 (Cosgrove) and HB 1793 (Cox) provide retroactive eligibility for Line of Duty benefits to state employees who were killed or disabled between 1972 and 2000.

The bills also create a death benefit payment of \$20,000, payable by the state, for any state or local government employee called to active duty since October 2001 and killed in action in armed combat while serving in a reserved component of the armed forces. Administration of the Line of Duty Act remains in the state Department of Accounts, and state general funds will continue to finance the program.

Workers' compensation

- HB 2775 (Brink) spells out the length of time an employee suffering from a disease directly attributable to the rescue and relief efforts at the Pentagon following the Sept. 11, 2001 terrorist attack has to file a claim. The bill sets a two-year statute of limitations from the date the diagnosis of the related disease is first communicated to the employer. The bill clarifies existing law.

- HB 1567 (Cosgrove) provides benefits for volunteer members of community emergency response teams and volunteer members of medical reserve corps so long as the sponsoring local government adopts a resolution acknowledging those people as employees qualified to receive benefits.

- HB 2700 (Sickles) provides benefits for first responders who are injured while traveling in response to a lawful order resulting from a state of emergency. In order to receive the benefits, "first responder must travel on the most expeditious route to or from his home or other location outside an assigned shift or work location to or from that shift of work location." The bill clarifies existing law.

- SB 1035 (Ruff) provides benefits to Virginia National Guard, Virginia State Defense Force and naval militia who are injured while reporting for duty.

Health insurance credits for constitutional officers, registrars

HB 2765 (Dillard) adds retired general registrars and their retired employees with at least 15 years of creditable service to the list of those who will receive a health insurance credit to their monthly retirement allowance under VRS. HB 1925 (Tata) codifies requirements currently in the appropriations act, and applies to persons with 15 or more years of total creditable service as a constitutional officer or local social services board employee. Under HB 1925, if these people become employed by a local government that does not elect to provide the health insurance credit, they will receive the credit, payable by the state.

Failed bills

A host of bills increasing retirement benefits by increasing the health insurance credit; raising the multiplier; expanding purchase of service eligibility; expanding the definition of credible compensation; and extending enhanced retirement benefits to additional groups of employees, such as deputy sheriffs were killed.

Public Safety

Guns and firearms restrictions loosened

The General Assembly continued to be receptive to lifting restriction on the possession or carrying of firearms. Both houses adopted bills that:

- Allow the holder of a valid concealed handgun permit to possess a handgun on school property while in a motor vehicle in a parking lot, traffic circle, or other means of vehicular ingress or egress to the school (HB 2535-Ingram).
- Eliminate the requirement that gun show promoters provide a list of vendors and exhibitors 72 hours prior to a show to the State Police and the sheriff or chief of police of the locality in which the show will be held. Gun show promoters will still be required to provide law-enforcement with at least 30-days notice of any show and provide a copy of the vendor and exhibitor list after the show. The bill also changes from 72 hours to five days the time within which the promoter must send the vendor and exhibitor list after the show, and would allow a promoter to send that list via e-mail (HB 2683-Lingamfelter).
- Rewrite the prohibition against carrying certain loaded semi-automatic rifles or pistols and shotguns in public in certain localities to delete the definition of "firearm" and replace it with the existing substance of the definition. The bill also clarifies that the prohibition does not apply to a person who has a valid concealed handgun permit (HB 1915-Cole).

EMS bills approved

A study of emergency medical services (EMS) by the Joint Legislative Audit and Review Commission led to a number of pieces of legislation this year. A number of bills were consolidated and the resulting legislation passed by the General Assembly is as follows.

- HB 2238 (O'Bannon) requires the State Board of Health to prescribe, in regulation, (i) training for emergency medical services personnel; (ii) collection and reporting of emergency response times; and (iii) enforcement provisions, including fines, to be assessed by the State Health Commissioner against any agency, or other entity found to be in violation of the emergency medical services statutes or regulations. All amounts paid as fines would be allocated to the emergency medical services special fund.
- HB 2253 (Bell) and SB 1146 (Deeds) add requirements to the Statewide Emergency Medical Services Plan developed by the Board of Health, including: (i) publishing the Plan, (ii) expanding paramedic and advanced life support training, (iii) establishing and maintaining a

process for crisis intervention and peer support services for EMS and public safety personnel, a statewide emergency medical services for children program, a statewide system of health and medical emergency response teams, and a program to improve dispatching of emergency medical services, and (iv) identifying and establishing best practices for managing agencies and improving response times.

- HB 2522 (O'Bannon) and SB 1145 (Deeds) increase the membership of the Emergency Medical Services Advisory Board from 25 to 28 by including one representative from each of the 11 regional emergency medical services councils, instead of eight representatives.

- HB 2523 (O'Bannon) clarifies that localities are currently permitted to charge insurers for ambulance services provided to any person covered by an accident and sickness insurance policy that provides coverage for ambulance services.

Legislation to require health insurers, health maintenance organizations, and other plans to cover necessary and appropriate ambulance services was killed.

Other public safety issues approved

- HB 1674 (Cosgrove) includes juvenile defendants in existing provisions that allow localities to seek reimbursement of expenses related to providing an emergency response to certain traffic and DUI incidents.

- SB 1164 (Stolle) requires, as of Jan. 1, 2006, the law enforcement agency making a report to the Central Criminal Records Exchange to include a mug shot of the individual arrested, along with the fingerprints. The State Police and local law enforcement are required to establish written procedures for conducting in-person and photographic lineups.

- HB 1763 (Dillard) requires the Secretary of Public Safety to establish a system for coordinating offender transitional and reentry services among state, local, and non-profit agencies.

Localities stripped of photo-red authority

The House Militia, Police and Public Safety Committee killed of the bills dealing with local policing of busy intersections using automated photographic equipment. As a result of the committee's inaction, local governments will not be allowed to use the technology -- designed to catch drivers running red lights -- after June 30.

Natural resources

Nutrient trading

One of the most significant environmental bills passed this year was the nutrient trading legislation. SB 1275 (Watkins) and its companion, HB 2862 (Bryant), establish a nutrient exchange program that will help municipal wastewater facilities achieve and maintain compliance with the load cap allocations for nitrogen and phosphorous delivered to the Chesapeake Bay and its tidal tributaries.

The State Water Control Board would be required to issue a general permit under the Virginia Pollutant Discharge Elimination System to eligible point source dischargers of nitrogen and phosphorous. The facilities that obtain such a permit, and which are interested in participating in the trading program, would be identified together with their individual load cap allocations and trading ratios.

Water Quality Improvement Fund

SB 1235 (Quayle), HB 2777 (Louderback), and SB 810 (Williams) are identical bills that ensure an infusion of capitol to the Water Quality Improvement Fund (WQIF). VML, VACo, the Chesapeake Bay Foundation, and the Virginia Association of Municipal Wastewater Agencies worked together on the legislation. The bills that emerged resolve several concerns of local governments and provide an infusion of \$50 million to the WQIF to finance the cost of design and installation of nutrient removal at publicly owned sewage systems.

Water Resource Project Permitting

SB 1248 (Bolling) is related to the state water supply planning process now underway, and is designed to help streamline water supply permitting. The bill requires that the Virginia Marine Resources Commission and the Department of Environmental Quality coordinate permit reviews (for individual Virginia Water Protection Permits.) The bill also provides a pre-application review process to those applicants who request it.

Biosolids

- HB 2198 (Abbitt) requires the Board of Health and the Department of Health to establish a program to train employees of those local governments that have adopted a biosolids ordinance in the testing and monitoring of sewage sludge.
- HB 2197 (Abbitt) requires a person holding a permit to apply sewage sludge to give notice to the local government at least 100 days prior to applying it.
- HB 2624 (Byron) provides that surface incorporation into the soil of sewage sludge applied to cropland may be required when practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. This bill also directs the Board of Health to develop regulations specifying and providing for extended buffers to be employed for application of sewage sludge.
- HB 2805 (Hogan) directs that sewage sludge be treated to meet standards for land application as required by board regulation prior to delivery at the land application site. This bill prohibits altering the composition of sewage sludge at the site where the sewage sludge is being applied.

Landfill siting

HB 2192 (Abbitt) will give local governments more flexibility in siting and expanding landfills. Currently, a landfill cannot be constructed within five miles of a groundwater or surface water supply. The bill prohibits the construction of a landfill within three miles of a public surface water supply or within one mile of a public groundwater supply, and increases the acreage threshold for expanding a landfill in a wetland.

Solid waste surcharge, flush tax bills killed

Both the Senate and the House versions of the flush tax bills, HB 2694 (Pollard) and SB 1240 (Whipple), failed. VML opposed the legislation.

HB 1760 (Dillard) also was killed. The bill would have established a \$1 per ton municipal solid waste disposal fee to be collected by localities with municipal solid waste landfills.

Human services

Community-based group homes

SB 1304 (Martin) and HB 2461 (Nixon) require the state boards that oversee group homes and residential facilities for children to develop regulations regarding the services required to be provided to ensure the education, health, welfare, and safety of the residents (as relevant to the Department).

HB 2881 (Nixon) and SB 1333 (Martin) authorize the commissioner of mental health, mental retardation, and substance abuse services to issue an order of summary suspension of the license of any group home or facility for children, including those licensed under core licensure regulations, when the health, safety, or welfare of the residents is at risk. Regulations must be promulgated within 280 days.

HJR 685 (Hall) creates a joint subcommittee to study private youth group homes. Study participants include representatives of the group home industry, local governments, and community services boards.

Comprehensive Services Act (CSA)

HB 2787 (Johnson) adds two members of the General Assembly to the membership of the State Executive Council, the supervisory body for the Office of Comprehensive Services and the CSA program. These members would not count toward the quorum of the council, but would be voting members. Legislation that directed DMAS to apply for a federal waiver to serve children not mandated under CSA whose parents may surrender custody so the child gets CSA services was killed.

Long-term care/assisted living

HB 2512 (Hamilton) and SB 1183 (Hanger) require new levels of regulation for assisted living facilities; renames the Board of Nursing Home Administrators as the Board of Long-Term Care Administrators in the Department of Health Professions; permits the commissioner of social services to issue an order of summary suspension for any facility in which the health, safety, or welfare of residents is threatened; increases from \$500 to \$10,000 the maximum civil penalty for a facility not in compliance with licensing regulations; requires applicants for licensure to undergo criminal background checks; requires medication aides to be registered by the Board of Nursing; and creates an education and technical assistance fund.

SB 935 (Stosch) extends the sunset provision for the Caregivers Grant Program until Dec. 31, 2010. This program provides a limited number of \$500 grants to individuals who care for a physically or mentally-impaired relatives during more than half the year.

Behavioral health

HB 1938 (O'Bannon) permits the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) to transfer appropriated funds directly to an operating community services board (CSB) or behavioral health authority, with approval of all of the affected local governments.

SB 753 (Wampler) and HB 1778 (Kilgore) require DMHMRSAS to establish standards to evaluate the need and appropriateness for the issuance of new licenses for providers of treatment for persons with opiate addiction. It does not affect current licensees or applicants for licenses in planning district eight (Northern Virginia).

Legislation was killed that would have required the establishment of from two to five mental health courts for nonviolent offenders with serious mental illnesses.

Child protective services (CPS)

HB 1969 (Cox) provides that, upon request, the local department of social services shall advise the person who was the subject of an unfounded child protective services investigation if the complaint or report was made anonymously. The identity of a complainant or reporter shall not be disclosed.

HB 2163 (Reese) and SB 1243 (Devolites Davis) provide that if, after an investigation of a child protective services complaint, the local department of social services determines that the actions or omissions of a teacher, principal, or other person employed by a local school board or employed in a state-operated school were within such employee's scope of employment and were taken in good faith in the course of supervision, care, or discipline of students, then the standard in determining if a report of abuse or neglect is founded is whether such acts or omissions constituted gross negligence or willful misconduct. This is a different standard than that used for other CPS cases.

Proof of legal presence required for certain benefits

HB 1798 (Albo) and SB 1143 (Hanger) deny certain public benefits to illegal aliens. The bills:

- require people over 19 to prove their legal presence in the United States when applying for publicly funded health care or DSS-administered public assistance benefits;
- exempt from this requirement certain benefits that federal law requires be given even to illegal aliens;
- allow legal presence be proven either by a verified social security number or by presentation of one of the documents that DMV may now accept to establish legal presence for getting a driver's license;
- authorize temporary awards of benefits while the applicant is waiting to receive a copy of a birth certificate or other document proving legal presence;
- have a delayed effective date of Jan. 1, 2006; and
- direct state DSS and DMAS to cooperate with affected local agencies to develop a verification system, including but not limited to tying into a system operated by the federal Department of Homeland Security to obtain immigration status information on certain applicants.

The bills create a difficult task for the administering local agencies, who will have to require the proof of legal presence from all applicants for the affected benefits, not just those suspected of being illegal aliens. As the applicants are often elderly or disabled, many will find it difficult to produce the necessary proof. Allowing a verified social security number to serve as proof will help, but there is some question about whether federal law permits social security numbers to be used in this way, so verification may still be difficult.

Other social services/benefit programs

HB 1761 (Dillard) provides that a person who is otherwise eligible to receive food stamps shall not be denied because that person has been convicted of a felony offense of possession of a controlled substance, provided the person is complying with all obligations imposed by the criminal court, is engaged in or has completed a substance abuse treatment programs, participates in periodic drug screenings, and any other obligations as determined by the Department of Social Services.

HB 2268 (Bell) requires the Department of Social Services, to the extent allowed by federal law, to provide transitional food stamp benefits for a period of no longer than five months

after the date on which Temporary Assistance for Needy Families (TANF) cash assistance is terminated.

SB 894 (Howell) requires a local social services department to adopt a grievance procedure that is either 1) adopted by the locality, 2) approved by the state board of social services, or 3) consistent with the state grievance procedure.

Education

State to seek waivers to No Child Left Behind

HB 2602 (Landes) and SB 1136 (Hanger) require the Board of Education to seek waivers from provisions of the federal No Child Left Behind Act that are 1) in conflict with the provisions of state law that prohibit the federal government from enacting unfunded mandates, 2) duplicate the state's accountability system in education (Standards of Learning, Standards of Accreditation, Standards of Quality), 3) are ineffective, 4) measure progress based on individual grade levels instead of other measures of success, 5) "over include" students in subgroups, and 6) that already meet the intent of the federal law. The board is also instructed to study the fiscal and other implications for the state and localities of continuing to participate in NCLB, or withdrawing from participation in the act.

SOQ bills add teeth to state enforcement

The State Board of Education requested HB 1762 (Dillard) and SB 779 (Potts) as vehicles for the state to deal with school boards that refuse to implement state accountability standards. The bills revise the Standards of Quality to require local school boards to (i) collect and analyze data and to use the results in evaluating instructional programs; (ii) implement actions identified through the state academic review of schools accredited with a warning; (iii) report the results of industry certification examinations; (iv) annually review their professional development programs; and (v) report compliance with the Standards of Quality annually to the Board of Education. As introduced the bills also increased the staffing standards for speech pathologists, but this increase was taken out during the legislative process.

Killed education bills

Bills that would have allowed school boards to provide transportation to private school students and to establish a scholarship tax credit were killed.

Looking ahead to 2006

Group homes, biosolids to be studied

HJR 685 (Hall) creates a joint subcommittee to study private youth group homes and single family group homes, including licensing requirements and the effects of the concentration of these homes on localities. The league has a legislative position supporting the creation of the study. The committee's membership includes a citizen member to be appointed by the Senate Rules Committee upon consideration of VML's recommendation. Other citizen members will represent the Virginia Association of Counties, the Virginia Association of Community Services Boards, and private providers.

Other studies to be undertaken include:

- HJR 643 (Hogan), directing a study by JLARC of the land application of biosolids.
- HJR 640 (Callahan), joint subcommittee study of options to provide a long-term funding source to clean up Virginia's waters.

- HJR 664 (Abbitt), Department of Taxation study of the feasibility of establishing uniformity in the design and use of tax stamps for cigarettes. The department currently administers a joint stamp program used in several localities in Northern Virginia.
- HJR 713 (Byron), joint subcommittee study of the consolidation of workforce development and training resources.
- SJR 273 (Puller), joint subcommittee to study the state's program for prisoner reentry to society.
- SJR 330 (O'Brien), joint subcommittee study of the regulation of the vehicle towing and recovery industry, including a number of issues related to localities such as the effect of local ordinances on fees charged by the industry, the need for local towing advisory boards, the ability of localities to prevent price gouging and the fairness of local ordinances that require towing and recovery businesses to be body shops or other businesses.
- SJR 336 (Mims), joint subcommittee of the operation of court clerks' offices (two year study).
- SJR 360 (Wagner), JLARC study of the comparative burden of regulatory compliance on Virginia's manufacturing sector (two year study).
- SJR 367 (Ticer), continues the Board of Forestry's study of incentives to private landowners to hold and preserve their forestlands.
- SJR 376 (Houck), Virginia Housing Commission study of the feasibility of exempting nonprofit organizations that construct housing for low-income persons from zoning provisions that limit how and when property may be subdivided into individual lots.
- SJR 393 (Stolle), continuing the 2004 study by the Department of Game and Inland Fisheries of local firearms hunting ordinances.

Study issues that did not survive included fiscal autonomy for school boards, the cost of meeting state accountability standards, transportation funding and homestead exemptions.